

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 755 of 1996

to

FIRST APPEAL No 757 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? (Srl. No.1 to 5)

STATE OF GUJARAT

Versus

NATHIBEN BHAVANBHAI

Appearance:

MR MR ANAND, GOVERNMENT PLEADER for Petitioner
MR YS LAKHANI for Respondent No. 6

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 17/10/96

COMMON JUDGEMENT

1. At the request of learned counsel appearing for

the parties, these three appeals are taken up for final hearing today.

2. By means of filing these appeals under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, the appellant has challenged the common judgement and award dated December 08, 1995 rendered by the learned Assistant Judge, Morbi in Land Reference Cases Nos. 31/1989 to 33/1989.

3. The State Government issued notification under section 4 of the Land Acquisition Act ('the Act' for short) on July 31, 1986 for acquiring the lands in question for the purpose of Demi II Irrigation Scheme. After following the procedure, the Land Acquisition Officer awarded Rs. 110/- per Are as compensation for bagayat lands. On references being made to the Court in all the three cases, the amount of compensation has been enhanced and the Court has directed the appellant to pay compensation at the rate of Rs. 350/- per Are for bagayat lands. Compensation for well is also awarded to each claimant. The names of the villages, amounts awarded by the Land Acquisition Officer, measurements of the lands acquired, etc are summarised and tabulated as under :

(1)

S.N. Ref.No. S.No. Bagayat Measure- Awarded Total
or ment of rate amount
Jirayat acquired per for land
land Are awarded

1. 2. 3. 4. 5. 6. 7.

1. 31/89 90/1 Bagayat 0-18-45 350/- 6,457.50
2. 32/89 113/1 " 0-52-40 350/- 18,340.00
3. 33/89 117/1 " 0-36-80 350/- 19,075.00
128/1 " 0-17-70

cont..(2)

(2)

| Amount for well | 12% over market value | Amount of sola- tium at 30% | Total amount payable | Amount already paid | Amount remaining payable |
|-----------------------|--------------------------------|--------------------------------------|----------------------------|---------------------------|--------------------------------|
| 8. | 9. | 10. | 11. | 12. | 13. |
| 9100/- | 774.90 | 1937.25 | 18269.69 | 2865.59 | 15404.06 |
| 9100/- | 2200.80 | 5502.00 | 35142.80 | 8127.24 | 27015.56 |
| 8200/- | 2289.00 | 5722.50 | 45286.50 | 8452.95 | 36833.55 |

4. In all these cases, the Court has relied on judgement rendered in Land Reference Cases Nos.36/1987 to 67/1987 for awarding compensation at the rate of Rs. 350/- per Are for the lands in question. In those cases, notification under section 4 of the Act was issued on February 18, 1980.

5. Learned counsel appearing for the State has submitted that the aforesaid award delivered by the Court in Land Reference Cases Nos. 36 of 1987 to 67 of 1987 was challenged by preferring an appeal before the High Court without success, but the State had carried the matter to the Apex Court and the Apex Court has allowed the appeal. (STATE OF GUJARAT VS. DAYA SHAMJIBHAI J.T. 1995 (6) SC 475). Mr M.R.Anand, learned Government Pleader contended that the Reference Court, while making the award in this case, has placed reliance on an award which has been subsequently modified by the Apex Court and therefore, the award determining the compensation on the basis of that award, cannot be sustained. It was further stressed that, on the facts and in the circumstances of the cases, the matters should be remanded to the Reference Court for re-determining the compensation in accordance with the law in view of Judgement dated September 11, 1996 rendered by Division Bench in First Appeal No.705/96 and other allied matters.

6. Mr Y.S. Lakhani, learned counsel appearing for the respondents has fairly conceded that, in view of the

judgement dated September 11, 1996 rendered by the Division Bench comprising B.C.Patel and S.D.Dave, JJ in First Appeals Nos. 705/96 to 709/96, 712, 715 to 721, 725 to 728 of 1996, the matters should be remanded to the Reference Court for re-determining the compensation in accordance with the law. In the case of State of Gujarat (supra), the Apex Court has held that, in view of the agreement between the land holders and Special Land Acquisition Officer, the Land Acquisition Officer was justified in making the awards in terms of the contract and the land owners could not seek reference under section 18 of the Act. The Reference Court, while making the award in the case of Daya Shamjibhai had enhanced the amount of compensation to Rs. 200/- per Are for bagayat lands. The fact that in view of Judgement of Supreme Court in the case of State of Gujarat (supra), First Appeal No.705/96 and other allied appeals are allowed and matters are remanded to the Reference Court for re-determining compensation is not in dispute. Under the circumstances, the appeals will have to be allowed and all the matters will have to be remanded to the Reference Court for re-determining compensation.

7. For the reasons stated above, the award made by the Reference Court in each of the three cases is set aside. All these matters are remanded to the Reference Court for re-determining compensation in accordance with the law. The Court below is directed to dispose of the cases within a reasonable time, after affording opportunity to both the sides to lead the evidence. The appeals are accordingly allowed, with no orders as to costs.

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